CF0000062482

Division Bench (Criminal)

"allotted by the High Court Legal Services Committee"

समक्ष माननीय उच्च न्यायालय मध्यप्रदेश, जबलपुर

अपील अन्तर्गत धारा- 374 (2) दण्ड प्र क्रिया संहिता

क्रिमिनल अपील क्रमांक- 2323 /1999

कुहरूपिता गडवा गौंड
उम्र- 32 वर्ष
पेशा- कृषि
निवासी- ब्रेछबेड़ा थाना-
छीटेडींगर
जिला- बस्तर मध्य0

(अपीलार्थी जेल में है)

विरुद्ध

मध्यप्रदेश शासन
द्वारा आरक्षी केन्द्र
जिला- कांकेर
मध्य0

—प्रत्यर्थी

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Adv. [illegible]
Application with Vakalatnama
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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 2323/99 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2323 of 1999

Appellants : Kehru

Vs.

Respondent : State of Madhya Pradesh

Shri R.K.Jain, learned counsel for the appellant.

Shri U.N.S.Deo, learned Govt. Advocate with Shri M.P.S.Bhatia, P.L. for the State/respondent.

ORAL JUDGMENT
(28.02.2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 04.08.99 passed by learned Additional Sessions Judge, Kanker in S.T. No. 278/97 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the IPC sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that one Somaram lodged a report P-4 in the police station Chhote Dongar on 30.04.97, at about 18.30 hrs. to the effect on 29.04.97 at about 4.00 p.m. he went for the treatment of his son and on 30/04/97 at about 9.00 a.m. he returned to his house when Mangti

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 2323/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	(wife of the deceased) came and informed that that a day before thereto at about 7.00 p.m. when her husband Dasru was sleeping in the verandah, accused Kehru came with an axe and attacked him with sharp side of the axe on the right side of the chest and stomach and committed murder of her husband and ran away. At that time Mangti and Murri were present in the house. She informed the Patel of the village who came and saw the body. There was a dispute regarding land between his brother Dasru & accused Kehru. Receiving this report, S.H.O. registered the crime under Section 302 of the IPC and left for the scene of occurrence, prepared panchnama P-5 of the body of Dasru. The axe, weapon of offence was taken into possession under P-6. Clothes of the deceased were taken into possession under P-7. The site plan P-12 was prepared. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Narayanpur who in turn committed the case to Sessions Judge, Jagdalpur from where the learned Additional Sessions Judge received the case on transfer for trial.	
	3. The prosecution in order to establish the charge against the accused/appellant examined eight witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.	
	4. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.	

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 2323/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
5.	We have heard Shri R.K.Jain, learned counsel for the accused/appellant and Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri M.P.S.Bhatia, P.L. on behalf of the State.	
6.	Homicidal death of Dasru is not in dispute.	
7.	As far as the involvement of the accused/appellant in the crime in question is concerned, P.W.-7 Mangli Bai @ Mangti Bai has stated that on the fateful day at about 4.00 p.m. when she was crushing *Landa* accused came with an axe and attacked her husband when he was sleeping on the ground. She came out of the room when she heard the sound and saw that the accused was attacking her husband and thereafter he ran away. In the cross examination of this witness she has stated that there was dispute regarding land between her husband i.e. the deceased and accused. She informed the Kotwar, Renu, Soma and Rasu. She chased the accused and caught him from the house of one Aytu. P.W.-4 Mangdu has stated that in connection with the murder of Dasru, on the request of Mangti Bai-wife of the deceased a panchayat was convened in which Panch, Patel and Kotwar were present and accused was called and in front of the Panchayat, accused/appellant made extra judicial confession that he murdered his brother Dasru and took the axe to the police station. Therefore in view of the evidence of eye witnesses P.W.-4 and P.W.-7 namely Mangdu & Mangti Bai regarding extra judicial confession made before the Panchayat, the involvement of the accused in the crime in question is established.	

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 2323/99 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-4-	
8.	Learned counsel for the accused/appellant argued that this is a case of single blow and the prosecution has not been able to establish the intention of the accused/appellant therefore offence against the accused/appellant does not travel beyond 304-II of the IPC.	
9.	Learned counsel further relied on the judgment of the Apex Court in the matter of ***Shivappa Buddappa Kolkar Vs. State of Karnataka & Others*** reported in ***2005 SCC (Cri.) 93*** wherein it is held that "***a single blow was inflicted with axe on the spur of the moment causing depressed fractures. Facts of this case was that the quarrel ensued between the deceased and the accused persons when the deceased obstructed the accused from taking his bullock cart through the deceased's field and as a sequel of the quarrel, accused/appellant suddenly picking up an axe kept on the cart and inflicted one blow with it on deceased's head which resulted in depressed fracture on the skull bone and the Court held that the matter does not fall in the thirdly of Section 300 and there was no intention***". But the above case is of no help to the accused/appellant.	
10.	In the present case, as per the evidence of P.W.-7 Mangti Bai there was a dispute between the deceased and the accused/appellant. The deceased was the brother of the accused and on the fateful day the deceased was sleeping when the accused came with a deadly weapon – axe and without giving any chance, attacked with the axe on the right side at mid clavicle line just below the thoracic cage and injury was transverse in position 2"x 2 cm. and deep up to 6 cm. caused by sharp cutting axe. Therefore in the circumstances when the deceased was sleeping, accused came prepared	

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 2323/99 सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	with the axe and he assaulted with the axe on the right side of the back and injury was penetrating as a result of which Dasru died spontaneously.	
11.	Thus, looking to the weapon of offence, part of the body where the injury was caused and the manner in which the accused came prepared establishes the intention of the accused to cause death of his brother Dasru. Therefore we do not find any substance in the arguments advanced by Mr. Jain, counsel for the accused/appellant and we do not find any illegality or infirmity in the judgment of the trial Court.	
12.	In the result, the appeal is without merits and the same is liable to be dismissed and it is hereby dismissed.	
	Sd/- **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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